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May 16, 2017

Richard Sisk
U.S. EPA Region 8
ENF-L
1595 Wynkoop
Denver, CO 80202-1129

Re: Hennis and Entities Draft Settlement Agreement Dated May 9, 2016

Dear Mr. Sisk:

We are disappointed to see that the EPA is steadfastly refusing to offer Mr. Hennis and the related companies monetary compensation. Any settlement must provide for such compensation. We are convinced that there is a way to arrive at just settlement. With the expectation that the EPA will reconsider its position and work in good faith for a truly equitable solution, Mr. Hennis executed the consents to extending access which are enclosed. As you review the EPA position, please consider the following:

Neither Mr. Hennis nor any of his companies have ever contributed to the environmental conditions in the Bonita Peak Superfund Area. Per the EPA's De Minimus/De Micromis Policy and Models, "A de minimis settlement, in general, is a settlement between EPA and those parties who are responsible for a minimal contribution, in amount and toxicity, of the hazardous substances at a Superfund site." Mr. Hennis and his companies clearly fit the definition for a de minimus settlement. However, EPA has abused its discretion in this matter and insists that Mr. Hennis and his companies are required to comply with the stricter "inability to pay settlement" format.

Mr. Hennis and the companies should not be disqualified from use of the procedures for non-exempt de or micromis parties. San Juan Corp., which owns the Gold King Mine acquired the Mine as a debtor preserving a security interest, as such it is exempted from CERCLA. It is said that 42 USC 9622(g) ("de minimis settlements") cannot be satisfied, because when the Gold King property was "purchased" they had "actual or constructive knowledge" of the presence of hazardous substances. But the "purchase" referred to in 42 USC 9622(g)(1)(B) must be taken as subject to the existing exceptions for lenders who acquire property on foreclosure, e.g., 42 USC 9601(20(E)(ii),

9601(40). There is also the "act or omission of a third party" (42 USC 9607(b)(3)) and the various innocent landowner, purchaser, and contiguous owner defenses (42 USC 9607(q)).

The guiding principal of an inability to pay settlement is that the settlement needs to be "equitable." The draft settlement prepared by the EPA for Mr. Hennis is anything but equitable and makes no attempt to balance the equities involved. The one-sided demand by the EPA for the approximately 35 acres of the Gladstone, Colorado townsite, which is next to an active ski area, and an additional 10 acres of prime land on the Howardsville Placer without any compensation effectively deprives Mr. Hennis of his retirement investment. There is nothing equitable in the EPA's taking of these two very valuable parcels.

Mr. Hennis has suffered a worldwide loss of reputation from the EPA's negligence which resulted in the blowout of the Gold King Mine. In addition, Mr. Hennis and his companies have suffered a large loss of marketability of the Gladstone parcel and the other San Juan County holdings. The Gold King Mine has a large proven resource of gold and the U.S.' largest deposit of tellurium, a strategic metal critical to the manufacture of thin film solar panels. There is nothing equitable in possibly closing the Gold King and other area mines forever. This affects all the property owners in the Bonita Peak Superfund area.

Mr. Hennis has offered to lease the Gladstone Townsite on very reasonable terms to the EPA, and has offered to lease the 10 acres of the Howardsville Placer for a modest waste dumping fee to EPA. These small payments will enable Mr. Hennis to pay his substantial existing and future legal bills in response to a situation entirely of the EPA's making. Mr. Hennis has successfully convinced the Navajo Nation and the State of New Mexico he and his companies had done nothing to create the conditions of the Gold King mine blowout, and that in fact he had worked for over fifteen years to raise the alarm about the neighboring Sunnyside Mine preventing its waters from discharging, and forcing them into the neighboring properties. EPA chose not to heed Mr. Hennis' warnings. Mr. Hennis will be unable to convince all the potential litigants in this matter of his innocence, and will be compelled to defend himself in Federal and other courts. That is why an equitable lease payment has been sought for the lands.

The objection has been raised that EPA cannot, in a settlement, offer to pay lease funds to the Settling Parties, in view of the need to comply with 42 USC 9606. That statute authorizes "the President" to issue or obtain orders for relief of the public health or welfare or the environment from an imminent threat of release of a hazardous substance. The section allows reimbursement of any person who incurs expenses in complying with such an order, provided that the person "is not liable for response costs." (42 USC 9606(b)(2)(C)). In the present situation, it has been said that the Settling Parties may be liable for response costs and so are not eligible to receive (e.g.) lease payments for use of certain properties owned by them to be used by EPA for waste management or disposal. However, it should not be difficult to draft either one or two (simultaneous) agreements that (a) dispose of the Settling Parties' response liability as

de minimis, thus establishing conclusively that the Settling Parties are not "liable for response costs," and (b) establish the reasonable costs of their response to a Section 9606 order, undertaken by the Settling Parties for relief of the public from an actual or threatened release of a hazardous substance, which costs are agreed to be paid to one or more of the Settling Parties by means of 42 USC 9606(b)(2).

Sincerely,

David A. Cook, P.C.
By: David A. Cook

DAC:js
Enclosure
cc: Clients
Office of the Honorable Congressman Scott Tipton